



Public Notice

**US Army Corps
of Engineers**
Louisville District

Public Notice No.
200301255

Date:
9 Feb 04

Closing Date:
10 Mar 04

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Louisville District
ATTN: Mr. Patrick Trier, CELRL-OP-FN
10557 McKelvey Road
Cincinnati, OH 45240-3929

Phone: (513) 825-4489

This notice announces an application submitted for a Department of the Army (DA) Permit, subject to Section 404 of the Clean Water Act (CWA).

APPLICANT: Mr. M. Scott Woelfel
Sydney's Bend, LLC
2144 Bambridge Court
Miamisburg, OH 45342

AGENT: Mr. Lee J. Otte
Otte Enterprises
505 Stevenson Road
Erlanger, KY 41018-2437

LOCATION: On an unnamed tributary of Clear Creek and its adjacent wetlands just east of Medlar Road and south of Benner Road in Montgomery County, Ohio.

Latitude: 39-36-32.1232
Longitude: 84-14-43.0206
7.5 Minute Quad: Springboro

PURPOSE: To accommodate the Sidney's Bend Residential Development.

DESCRIPTION OF WORK: The applicant proposes to place approximately 5,000 cubic yards of clean earthen fill material from 3 onsite borrow areas to fill about 670 feet of stream and a total of 0.92 acre of jurisdictional wetlands. The intermittent headwater stream would be relocated to the north property line. The site development would accommodate the development of 32 single-family residential lots, a stormwater detention basin, and other attendant features, i.e. roads.

MITIGATION: The applicant proposes to replace the intermittent stream with 850 linear feet of new stream channel constructed at the northern and western limits of the project. The proposal includes 1.14 acres of wetland along the newly constructed channel and 0.28 acre of wetland at the northwest corner of the site totaling 1.42 acres (1.5:1 ratio).

The topsoil from the existing wetlands would be excavated and stockpiled to be reclaimed for the new wetland areas. The new linear wetland would include low earthen berms at periodic intervals to assist in water retention. The berms would be constructed a foot high and 4 feet wide. The berms and all bare soil areas would be planted to native vegetation. A conservation easement would be implemented to protect the stream and wetland areas. The mitigated areas would be monitored for a 5-year period following completion of the work.

It is noted that this proposed mitigation plan is open to comment and subject to change. The Corps will make a determination of appropriate mitigation, upon review of all submitted information.

REVIEW PROCEDURES: A DA Permit cannot be issued if any legally required Federal, State, or local authorization or certification is denied. A DA Permit, if otherwise warranted, will not be issued until a State of Ohio Water Quality Certification or waiver is on file at this office. The applicant is responsible for obtaining the certification from the Ohio Environmental Protection Agency (OEPA).

In accordance with Corps of Engineers policy, the OEPA has one year from the date of this notice to take a final action regarding the Section 401 Water Quality Certification (WQC). If during this year, Corps processing for this application is completed but OEPA has not yet taken a final action regarding the WQC, and if otherwise warranted, a Provisional DA Permit will be issued. However, this permit will not authorize the performance of any work. The Provisional Permit will describe the work that would be authorized and the General and Special Conditions which would be placed on the final DA Permit if OEPA subsequently issues the WQC or the Corps decides to issue because the one-year deadline expires.

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956. Based on available information, the proposed activity will not destroy or endanger any Federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. A request for a public hearing must state the specific interest that might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. The permit area is comprised of the jurisdictional waters of the United States, the new stream channel and wetland areas, and 3 borrow areas. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, prehistoric, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest.

That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request. Any objections that are received during this period will be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. A permit will be granted unless its issuance is found to be contrary to the public interest.

Information pertaining to this application is available for public examination during normal business hours upon prior request. All comments regarding this proposal should be addressed to Mr. Patrick Trier, CEORL-OP-FN, at the address noted above and should refer to the Public Notice Number 200301255.